

**SOUTH DAKOTA DEPARTMENT OF LABOR  
DIVISION OF LABOR AND MANAGEMENT**

**ARAM JOBE,**

**HF No. 129, 2009/10**

**Claimant,**

**v.**

**DECISION**

**JOHN MORRELL & COMPANY,**

**Employer/Self-Insurer,**

This is a workers' compensation case brought before the South Dakota Department of Labor Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. This decision will encompass all issues raised by two Petitions for Hearing filed by Claimant, Aram Jobe dated January 19, 2010, HF No. 128, 2009/10 and January 30, 2008, HF No. 107, 2007/08. A hearing was held before Donald W. Hageman, Administrative Law Judge on September 14, 2010, in Sioux Falls, South Dakota. Claimant appeared pro se. Michael S. McKnight represented John Morrell & Company, Employer/Self-Insurer. An interpreter of the Wolof language was provided at the hearing.

***Issues:***

This case presents two legal issues:

Whether a work-related injury is a major contributing cause of Claimant's shoulder, neck and back pain since January of 2005?

***Facts:***

1. Claimant began working for Employer on the meat packing line in 1999.
2. Claimant was injured in a work-related accident on or about September 2, 2004, while working for Employer.
3. Employer/Self-Insurer has paid all medical expenses resulting from Claimant's September 2, 2004 injury.
4. On July 1, 2005, Dr. Miller performed an excision of a Hidradenitis Suppurativa on Claimant's right upper extremity.

5. On November 1, 2005, Claimant's excision and reconstructive surgery were healed and Claimant's physician released her to work without restrictions.
6. Claimant saw Dr. Jennifer Burger on December 28, 2005. During that visit, Claimant complained of cold symptoms and back and shoulder pain.
7. Claimant reported a work injury to her Employer on or about January 4, 2006.
8. Claimant saw Dr. Flanagan on January 4, 2005. Flanagan's medical records indicate that Claimant's complaints that day were similar to those she had several months earlier, specifically, right upper arm and shoulder pain.
9. Between January 4, 2006 and May 30, 2006, Claimant saw numerous medical providers complaining of pain in her shoulders, neck and back.
10. On April 3, 2006, Dr. Jeff Luther performed an independent medical evaluation of Claimant's medical condition. Luther opined that Claimant's work-related activities were not a major contributing cause of her shoulder, neck and back pain at the time of the evaluation.
11. On May 30, 2006, Claimant underwent carpal tunnel surgery by Dr. Blake Curd.
12. Dr. Luther performed additional independent medical examinations of Claimant on February 8, 2007 and December 22, 2008. Luther opinions following those examinations did not change from that offered following his April 3, 2006 opinion.
13. The record contains no medical opinions by any medical providers that Claimant's work-related activities were a major contributing cause of her shoulder, neck and back pain after November 1, 2005.
14. Claimant seeks medical expenses accrued since January of 2006 in excess of \$11,800.

### **Analysis and Decision:**

The question posed by this case is whether a work-related injury is a major contributing cause of Claimant's shoulder, neck and back pain since January of 2005. Questions of causation in workers' compensation cases are governed by SDCL 62-1-1 (7). SDCL 62-1-1(7) defines "injury" or "personal injury" as:

[O]nly injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

- (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or
- (b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment or need for treatment.
- (c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

The general rule is that the claimant has the burden of proving all facts essential to sustain an award of compensation. Day v. John Morrell & Co., 490 N.W.2d 720 (S.D. 1992); Phillips v. John Morrell & Co., 484 N.W.2d 527, 530 (S.D. 1992); King v. Johnson Brothers Construction Co., 155 N.W.2d 193, 195 (S.D. 1967). "The testimony of professionals is crucial in establishing this causal relationship because the field is one in which laymen ordinarily is unqualified to express an opinion." Day v. John Morrell & Co., 490 N.W.2d 720, 724 (S.D. 1992). When medical evidence is not conclusive, Claimant has not met the burden of showing causation by a preponderance of the evidence. Enger v. FMC, 565 N.W.2d 79, 85 (S.D. 1997). "A medical expert's finding of causation cannot be based upon mere possibility or speculation. Instead, '[c]ausation must be established to a reasonable medical probability. Orth v. Stoebner & Permann Const., Inc., 724 NW2d 586, 593 (S.D. 2006) (citation omitted).

In this case, no doctors have offered a medical opinion that a work-related injury is the cause of Claimant's medical condition since January of 2006. On the other hand, Dr. Luther has opined on three separate occasions that there is no causal relationship between Claimant's work-related activities and her current medical condition. Under these facts, Claimant has failed to meet her burden of proof. Employer/Self-Insurer is not responsible for the payment of Claimant's outstanding medical bills.

